PUBLIC LANDS: CANCELLATION OF LAND PATENTS FOR FRAUD: STATUTE OF LIMITATIONS.—Can the United States government annul, on account of fraud, a land patent which has been issued approximately twenty years ago, where such fraud has been successfully concealed until three years prior to the commencement of the suit? This question was presented in *United States v. Southern Pacific Company.*[1] Lands amounting in value to a quarter of a billion dollars were involved in this one suit. The complaint alleged that the defendants had knowledge that the lands to which they sought patents were mineral and thus excepted by Acts of Congress from the grants. Nevertheless, "falsely and with the intention to deceive the United States government" they made application and swore out false affidavits as to the non-mineral character of the lands. The government relied upon these misrepresentations and "being influenced solely thereby" issued patents. Thereafter, and until within three years of the bringing of this suit the company "contrived effectually to conceal the fact of the existence of its own fraud previously consummated." The bill was heard on motions to dismiss, the defendants contending that the suit was barred by the Act of Congress of March 3, 1891,[2] providing that "suits to vacate and annul patents hereafter issued shall only be brought within six years after the date of the issuance of such patents." The motions were denied, the court holding that the statute "has no application in such a proceeding as this," for the concealed fraud suspended it.

The Circuit Courts for the districts of Oregon[3] and Colorado[4] have held that actions were barred after the expiration of six years even though the fraud had been concealed up to a time within that period. "The object of this statute is to extinguish any right the government may have in the land and vest a perfect title in the adverse holder after six years from date of the patent, regardless of any mistake or error in the Land Department or the fraud or imposition of the patentee."[5] It does not affect the remedy merely but runs against the rights of the parties and its language "is plain and leaves no room for construction." On the contrary, however, it has been as strongly and emphatically stated that the statute does not apply to cases of concealed fraud but is suspended until discovery thereof.[6] "To hold that by concealing a fraud, or by committing a fraud in a manner that it concealed itself until such time as the party committing the fraud could plead the statute of limitations to protect it, is to make the law which was

---

[1] (June 7, 1915), 225 Fed. 197.
[2] 26 Stat. at L. 1093. See U. S. Comp. Stat., § 5114.
[3] United States v. Smith & Werner (1910), 181 Fed. 545.
[4] United States v. Exploration Co. (1911), 190 Fed. 405.
[5] United States v. Smith & Werner (1910), 181 Fed. 545, 554.
[6] Linn & Lane Timber Co. v. United States (1912), 196 Fed. 593; United States v. Exploration Co. (1913), 203 Fed. 387; United States v. Lee Wilson & Co. (1914), 214 Fed. 630.

designed to prevent fraud the means by which it is made successful and secure."[7] This language, however, so often quoted, was said with respect to a statute which limited the period from the time the "cause of action accrued," but it is argued that it makes no difference whether the period of limitation commences to run from a fixed date, such as the date of the issuance of patent, or whether it commences to run from the accrual of the cause of action. It "affects in no way the reason upon which the rule is based."[8]

It remains for the United States Supreme Court to settle the point. The Southern Pacific case will doubtless be appealed so that the point will be squarely raised. The question has been adverted to by way of dictum in that court. Mr. Justice Brewer, after referring to the periods of limitation applicable to patents issued before and after the act, remarked; "Under the benign influence of this statute it would matter not what the mistake or error of the Land Department was, what the frauds or misrepresentations of the patentee were, the patent would become conclusive as a transfer of the title, providing only the land was public land of the United States and open to sale and conveyance through the Land Department."[9] The only question before the court then, however, was whether or not bona fide purchasers from the fraudulent patentee, in a situation similar to the one here under discussion, acquired an indefeasible title against the government and it was held they did.

Whether under a general statute of limitations which makes no express provision for cases of this sort, fraudulent concealment of facts constituting a cause of action delays the running of the statute until the injured party discovers them or with reasonable diligence might have discovered them is also subject to great conflict of authority. California, following the weight of authority, has settled the question in the affirmative,[10] and declared that the principle applies to actions at law as well as in equity.[11] On the other hand, however, a very respectable line of authority makes no exception in actions at law, in regard to fraud or fraudulent concealment, but holds that the courts are bound by the terms of the statute and cannot add to it or declare an exception which would nullify it in its application to cases properly embraced in its terms.[12]

V. M. A.

---

[7] Bailey v. Glover (1874), 88 U. S. 342, 349, 22 L. Ed. 636.

[8] United States v. Exploration Co. (1913), 203 Fed. 387, 391.

[9] United States v. Winona etc. R. R. Co. (1896), 165 U. S. 463, 41 L. Ed. 789, 17 Sup. Ct. Rep. 368.

[10] Lightner Mining Co. v. Lane (1911), 161 Cal. 689, 120 Pac. 771, Ann. Cas. 1913-C, 1093, collecting the authorities.

[11] Kane v. Cook (1857), 8 Cal. 449. See also Sherwood v. Sutton (1828), 5 Mason, 143, Fed. Cas. No. 12, 782.

[12] Freeholders of Somerset v. Veghte (1882), 44 N. J. Law, 509;

SCHOOLS AND SCHOOL DISTRICTS: POWER OF SCHOOL BOARDS TO COMPROMISE CLAIMS.—Boards of school trustees have power to compromise threatened litigation against their districts. Such is the decision of *Smith v. Cloud.*[1] At first sight, this holding seems out of line with the prevailing view of the nature of school districts and the powers of their officers. For school districts have only a limited number of corporate powers,[2] and while they have sometimes been included within the general name "municipal corporations,"[3] accuracy demands that they fall within the class of corporations known as quasi corporations.[4] Accordingly, the Supreme Court of California has said that a school district is a public corporation of a quasi municipal character.[5] Consequently, as the powers of municipal corporations are, as shown by Judge Dillon's oft-quoted statement,[6] limited, a fortiori the powers of school districts must be very limited. In fact, it has been said by the courts of New Hampshire and California that school districts are quasi corporations with the most limited powers known to the laws.[7]

But courts have repeatedly said that school directors or trustees have such powers as result by fair implication from the powers expressly granted to them.[8] Is it not reasonable, therefore,

---

Williams v. Pomeroy Coal Co. (1882), 37 Ohio St. 583, 6 Morr. Min. Rep. 195; Troup v. Smith (1822), 20 Johns. 33. See cases collected in Lightner Mining Co. v. Lane, supra.

[1] (Sept. 28, 1915), 21 Cal. App. Dec. 394.

[2] Dillon, Municipal Corporations, 5th ed., § 37. The power of compromising claims is not granted to school districts by Cal. Pol. Code, § 1575-ff.

[3] Elliott, Public Corporations, 2d. ed., p. 9; Winspear v. District Township of Holman (1873), 37 Iowa, 542; Curry v. District Township of Sioux City (1883), 62 Iowa, 102, 17 N. W. 191.

[4] Dillon, Municipal Corporations, § 36; Abbott, Municipal Corporations, § 1073; Andrews v. Estes (Me., 1834), 26 Am. Dec. 521 n; Andrews v. Estes (1834), 11 Me. 267, n.

[5] Hughes v. Ewing (1892), 93 Cal. 414, 28 Pac. 1067. Other cases to the same effect are cited in 3 California Law Review, 195. As to school districts in this state, see the second chapter of "Chapters on the School Law of California," 3 California Law Review, 195-215. (The first article of this series, "The Public School System," is to be found in 2 California Law Review, 459-479.)

[6] 1 Dillon, Municipal Corporations, 237; "It is a general and undisputed proposition of law that municipal corporations possess and can exercise the following powers and no others; first, those granted in express words; second, those necessarily or fairly implied in or incident to the powers expressly granted; third, those essential to the accomplishment of the declared objects and purposes of the corporation—not simply convenient, but indispensable."

[7] Harris v. School Dist. (1853), 28 N. H. 58, 62; Skelly v. School Dist. (1894), 103 Cal. 652, 658, 37 Pac. 643.

[8] 25 Am. & Eng. Encyc. Law, 56; Seeger v. Mueller (1890), 133 Ill. 86, 24 N. E. 513; Union School Dist. v. First Nat'l Bank of Crawfordsville (1885), 102 Ind. 464, 2 N. E. 194; Jay v. School Dist. No. I (1900),